

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. BENGE, JR.,

Petitioner

v.

MICHAEL DELOY, Warden,
et al.,

Respondents

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Civ. Act. No. 08-078-GMS

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, John H. Benge, Jr., has applied for federal habeas relief, challenging his guilty plea in Superior Court to a weapons offense and two counts of criminal contempt of a protection from abuse order. The answer to the petition was originally due May 5 (DI 7); respondents obtained an extension of time to May 30 and then to June 18 in which to file the answer to the petition.

2. Counsel expected to complete work on the answer last week and over the past weekend. However, counsel became unexpectedly ill the end of last week and has been unable to work. As a result, the answer in this case has not been completed as had been anticipated. Moreover, because of counsel's illness and resultant absence, work on several other cases assigned to counsel has not been completed. Counsel also notes that Benge's case is procedurally complicated. Given

the backlog that has developed and the complexity of Benge's case, counsel anticipates that the answer in this case can be – and will be – completed by July 3.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has “the discretion to take into account various factors such as the respondent’s workload” in determining the period of time that should be allowed to answer the petition.

4. This is respondents’ third request for an extension of time in this case.

5. Respondents submit that an extension of time to and including July 3, 2008 in which to file an answer is reasonable. Respondents submit herewith a proposed order.


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June 18, 2008

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.


Loren C. Meyers
Deputy Attorney General

Counsel for Respondents

June 18, 2008

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ORDER

This _____ day of _____, 2008,

WHEREAS, respondents have requested an extension of time in which to file an answer, and

WHEREAS, it appears to the Court that the requested extension is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before July 3, 2008.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2008, I electronically filed the attached Motion for Extension of Time with the Clerk of the Court using CM/ECF. I also certify that on June 18, 2008, I caused to be delivered by the United States Postal Service two copies of the same document to the following non-registered participant:

John H. Benge, Jr.
SBI No. 494395
Sussex Correctional Inst.
P. O. Box 500
Georgetown, DE 19947


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